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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,210	12/06/2005	David Hulbert	04405-004US1	9632
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EXAMINER				
VASUDEVA, AJAY				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,210

Applicant(s)

HULBERT, DAVID

Examiner

Ajay Vasudeva

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Geiger (US 3,634,898 A).

Geiger shows a small boat with a double hull made of reinforced plastic and defining a bottom compartment enclosing closed-cell foam (see col. 2, lines 25-26; and fig. 2). The boat comprises a recessed transom [8], and sidewall compartments (fig. 4) accessible for storage.

Applicant may note that any small boat – whether rowed, sailed, or driven by a motor – is broadly considered to be a dinghy. Applicant may also note that while claim 2 is a product claim, the limitation "**hull is formed of rotation-molded . . . plastic**" (emphasis added) is a product by process limitation. Therefore, the process by which the hull is made is not given weight in the product claims (MPEP 2113).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostanecki (US 4,161,796 A) in view of Christensen (US 3,553,750 A).

Kostanecki shows a small boat – or a dinghy – with a double hull made of plastic and defining a bottom compartment enclosing closed-cell foam (see col. 2, lines 58-68; and fig. 2). The boat comprises sidewalls (see fig. 7), a mast [12] and a sail [16]. However, Kostanecki does not show sidewall compartments accessible for storage.

Christensen shows a dinghy with a double hull made of plastic, enclosing closed-cell foam. The dinghy comprises sidewall compartments [30] accessible for storage (see col. 4, lines 68-70).

It would have been obvious for an artisan to provide compartments in the sidewalls of Kostanecki, as taught by Christensen. Having such an arrangement would have allowed one to easily and safely store any essential or personal items in the accessible compartments, thereby preventing their loss or spoilage by moisture.

Regarding claim 6, the Examiner takes an Official notice that mounting beackets to the gunwale of boats is notoriously old and well known in the marine art (for e.g., see US Patent numbers 4986785, 3216030, 2651789). Therefore, it would have been obvious for an artisan to provide such a mechanism so that someone accidentally thrown overboard could grab the beackets for support in the rough waters and could safely pull self back inside the boat.

Regarding claim 11, the Examiner similarly takes an Official notice that use of self-draining arrangements with a removable plug is also notoriously old and well known in the marine art (for e.g., see US Patent numbers 5522338, 4930657, 3459150, 3394671, 2978138, 2929347). Therefore, it would have been obvious for an artisan to provide such a mechanism so as to allow an egress of collected water from the inside of the boat, thereby enhancing the comfort and the safety of the passengers.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kostanecki (US 4,161,796 A) in view of Christensen (US 3,553,750 A), and further in view of Parsons (US 4,348,972 A).

Kostanecki, as modified above by Christensen, shows a dinghy having a mast [12], a sail [16] and sidewall compartments accessible for storage. However, *modified* Kostanecki does not disclose any arrangement for storing the mast and sail within the sidewall compartments.

Parsons discloses a small boat having a mast, wherein the mast is disassembled for storage in the storage compartments [72, 74] (col. 3, lines 50-54).

It would have been obvious for an artisan to use a disassembling mast in the modified boat of Kostanecki, as taught by Parsons. Having such an arrangement would have allowed one to easily and non-obstructively store the mast in the compartments, thereby reducing the risk of injury to the passengers or an accidental damage to the mast.

Re the limitation “... **are stored between uses in the** ...”, it is noted that such is a functional limitation. Applicant is reminded that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP 2114. Even when the prior art fails to explicitly disclose limitations recited as functional language, if the prior art (i) discloses all claimed structural limitations and (ii) the disclosed structure is capable of performing the recited function, the prior art meets the requirements of the claim. (*See In re Swinehart*, 169 USPQ 226 (CCPA 1971); *In re Schreiber*, 44 USPQ2d 1429). In the present case, the mast and the sail are considered as capable of being stored between uses within the compartment, and therefore satisfy the requirement of the claim.

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6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (US 3,634,898 A), in view of Taylor (US 3,473,176 A).

Geiger shows a small boat, as above. However, Geiger does not show any seating arrangement.

Taylor shows a small boat having a center seat [14] that can be moved to a position toward the bow to provide more leg room for an occupant seated in the rear seat [15].

It would have been obvious for an artisan to provide a seating arrangement in the boat of Geiger, as taught by Taylor. Having such an arrangement would have allowed multiple passengers to be seated comfortably. Further, moving the central seat forwardly would have allowed greater leg room for an occupant seated in the rear seat, whether for rowing or any other activity.

7. Claims 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (US 3,634,898 A), in view of Finn (US D355,886 A).

Geiger shows a small boat having sidewall compartments accessible for storage, as above. However, Geiger does not show a removable exposure canopy having multiple panels, or a cylinder secured along a gunwale and comprising a deployable web ladder.

Regarding claims 7-9 and 13, the Examiner takes an Official notice that use of a removable canopy with multiple panels on a marine vessel is notoriously old and well known in the marine art (for e.g., see US Patent numbers 6623322, 5092262, 5027739, 4926782, 4706599, 3698409). Therefore, it would have been obvious for an artisan to provide such a canopy on the boat of Geiger to protect the passengers and boat components from the harmful radiation of the sun and the adverse weather conditions. The limitation "... **canopy is stored between uses in the ...**" (claim 8) is a functional limitation, as also noted above.

Because the canopy is capable of being stored between uses within the compartment, the requirement of the claim 8 is considered satisfied (please see ¶15 above for a detailed explanation regarding the interpretation of functional limitation).

Regarding claim 12, Finn suggests a cylinder secured along a gunwale of a boat and comprising a deployable web ladder (fig. 13). Therefore, it would have been obvious for one skilled in the art at the time of the invention to attach a cylinder comprising a deployable ladder in the boat of Geiger, as taught by Finn. Having such an arrangement would have provided a readily accessible emergency ladder that could be securely stored in a protective housing.

8. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger (US 3,634,898 A) in view of Blanchard (US 6,325,014 B1)

Geiger shows a small boat with a recessed transom. However, Geiger does not disclose a mode of propulsion, and does not show a transom plate.

Blanchard shows a small boat that can be propelled by an outboard motor, and describes a recessed transom having a transom plate [26] (col. 4, lines 20-40; and fig. 1).

It would have been obvious for an artisan to provide an outboard motor supported by a transom plate at the recessed transom of Geiger, as taught by Blanchard. Having such an arrangement would have provided an efficient and inexpensive means of propelling the boat of Geiger. Additionally, the presence of a transom plate would have protected the transom against premature damage due to excessive structural stresses caused by the outboard motor.

Conclusion

9. The prior art made of record in the attached PTO Form 892, but not yet relied upon, is considered pertinent to applicant's disclosure.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 – 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ajay Vasudeva/
Primary Examiner
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